

## REMARKS

### **Status of the Claims**

Claims 1-6 are currently pending and claims 7-15 are withdrawn.

Method claims 7-8 incorporate the limitations of claim 1, which are within the scope of Group I of the Restriction Requirement. Therefore, these method claims are specifically related to the elected product claims of Group I as product and method of use and should be rejoined in the case accordingly. Applicants therefore respectfully request rejoinder and consideration of claims 7-8 on this basis.

### **Response to Rejection Under §102(e)**

The Action rejects claims 1, 2 and 6 under §102(e) as anticipated anticipated by Kirk *et al.* Applicants respectfully traverse. Applicants note that the claims of Kirk *et al.* cited in the Action refer to a “LDH”; in contrast, the instant claims require a lactate dehydrogenase-C4. Applicants further note that a genus does not anticipate a species. *Chester v. Miller*, 906 F.2d 1574, 15 U.S.P.Q.2d 1333 (Fed. Cir. 1990).

However, in the interest of compact prosecution, Applicants submit herewith a declaration under §1.131 by Dr. G. Barrie Kitto showing reduction to practice of the instantly claimed invention prior to the earliest priority date of Kirk *et al.*, namely, April 13, 2001. Withdrawal of the rejection is respectfully requested.

## **Conclusion**

This is believed to be a complete response to the referenced Office Action. Applicant submits that, in light of the foregoing remarks, the present case is in condition for allowance and such favorable action is respectfully requested.

The Examiner is invited to contact the undersigned at (512) 536-5674 with any questions, comments or suggestions relating to the referenced patent application.

Respectfully submitted,



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